

1970

## c 96 The Child Welfare Amendment Act, 1970

Ontario

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## CHAPTER 96

# An Act to amend The Child Welfare Act, 1965

*Assented to November 13th, 1970*  
*Session Prorogued November 13th, 1970*

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause *e* of section 1 of *The Child Welfare Act, 1965* is <sup>1965, c. 14, s. 1, cl. *e*, amended</sup> amended by striking out "Public Welfare" and inserting in lieu thereof "Social and Family Services".

2.—(1) Clause *d* of subsection 2 of section 6 of *The Child Welfare Act, 1965* is amended by inserting after "assigned" <sup>1965, c. 14, s. 6, subs. 2, cl. *d*, amended</sup> in the first line "or committed".

(2) Clause *g* of subsection 2 of the said section 6 is repealed and the following substituted therefor: <sup>1965, c. 14, s. 6, subs. 2, cl. *g*, re-enacted</sup>

(*g*) assisting the parents of children born out of wedlock or likely to be born out of wedlock and their children born out of wedlock,

3.—(1) Subsection 1 of section 9 of *The Child Welfare Act, 1965*, as amended by subsection 1 of section 2 of *The Child Welfare Amendment Act, 1966*, is further amended by inserting after "shall" in the sixth line "subject to subsection 1 of section 11", so that the subsection shall read as follows: <sup>1965, c. 14, s. 9, subs. 1, amended</sup>

(1) Subject to section 10, the estimate of expenditures of a children's aid society shall be submitted, before the last day of February, to the council of each municipality in the area in which the society has jurisdiction, and, where the estimate is prepared in accordance with the prescribed standards, the municipal council shall, subject to subsection 1 of section 11, grant its approval to the necessary expenditures. <sup>Approval by council</sup>

(2) Subsection 2 of the said section 9, as amended by sub- <sup>1965, c. 14, s. 9, subs. 2, re-enacted</sup> section 2 of section 2 of *The Child Welfare Amendment Act, 1966*, is repealed and the following substituted therefor:

Submission  
to  
Minister

- (2) Every estimate of expenditures prepared under section 8 is subject to the Minister's approval and shall be submitted to the Minister after it is approved under subsection 1 and before the 25th day of April and the Director shall within ten days after the estimate has been submitted to the Minister, recommend to the Minister that the estimate be approved as submitted or that the amount of the estimate be varied.

Notice by  
Director

- (3) Where the Director makes a recommendation under subsection 2 that the amount of the estimate be varied, he shall give notice thereof to the children's aid society and to the council of each municipality in the area in which the society has jurisdiction or to the district child welfare budget board, as the case may be.

Approval by  
Minister

- (4) The Minister, after the expiration of thirty days from the making of the Director's recommendation under subsection 2, may approve the estimate as submitted or may, subject to subsection 5, vary the amount of the estimate and approve the amount as so varied, provided that where the Director recommends that the estimate be approved as submitted, the Minister may approve the estimate as submitted forthwith after the making of the recommendation.

Notice by  
Minister

- (5) Where the Minister intends to vary the amount of the estimate and to approve the estimate as so varied, he shall give notice to the children's aid society and to the council of each municipality in the area in which the society has jurisdiction or to the district child welfare budget board, as the case may be, within ten days after the Director makes his recommendation under subsection 2.

1965, c. 14,  
s. 11,  
re-enacted

4. Section 11 of *The Child Welfare Act, 1965* is repealed and the following substituted therefor:

Reference  
to child  
welfare  
review  
committee

- 11.—(1) Where the council of a municipality or a district child welfare budget board does not agree with the amount of the estimate submitted to it by a children's aid society or does not agree with the portion that is referable to the municipality it may, on or before the 25th day of April, instead of granting its approval to the estimate under section 9 or 10 and submitting it to the Minister, request the Minister to refer the matter to a child welfare review committee.

Idem

- (2) Where a children's aid society, the council of a municipality or a district child welfare budget board does not agree with,

(a)



- (a) a variation in the amount of the estimate as recommended by the Director for the approval of the Minister under subsection 2 of section 9; or
- (b) the amount of the estimate that the Minister intends to approve as varied under subsection 4 of section 9,

any one of them may, before the Minister's approval is given under subsection 4 of section 9, request him to refer the matter to a child welfare review committee.

- (3) Where the Minister receives a request under subsection 1 or 2, he shall forthwith, Composition  
of  
committee
  - (a) appoint one member to the child welfare review committee, who shall be the chairman thereof; and
  - (b) request by notice in writing that,
    - (i) one member be appointed to the committee by the Association of Children's Aid Societies, and
    - (ii) one member be appointed to the committee by the council of the municipality or the district child welfare budget board, as the case may be,

within ten days of the giving of the notice.

- (4) When the members have been appointed under clause *b* of subsection 3 they shall notify the Minister who shall forthwith give notice of the names of the members of the child welfare review committee to the parties concerned. Notice
- (5) Where a children's aid society has jurisdiction in more than one municipality and there is no district child welfare budget board, the member to be appointed under subclause ii of clause *b* of subsection 3 shall be appointed jointly by those municipalities. Joint  
appoint-  
ment to  
committee
- (6) Where a party who receives a notice to appoint a member to the committee under clause *b* of subsection 3 fails to appoint a member within the time prescribed, the Minister shall, in the place of the party who failed to make the appointment, forthwith appoint the member to the committee. Failure to  
appoint  
member

## Procedure

- (7) The child welfare review committee shall be convened by the chairman thereof within ten days after all the members have been appointed and the committee shall determine its own procedures and shall require the Director, and give full opportunity to the society, the municipality or district child welfare budget board and any other municipality in the area in which the society has jurisdiction, to present evidence and make submissions.

## Evidence

- (8) The child welfare review committee may receive such written or oral evidence from any of the parties, the municipalities mentioned in subsection 7, the Director or any other person as it in its discretion deems proper whether admissible in a court of law or not.

## Findings of committee

- (9) The child welfare review committee shall review the evidence submitted to it and obtain any additional evidence or material it deems necessary and shall report its findings and make recommendations to the Minister within thirty days from the date that the committee first convenes and the findings and recommendations of the committee shall be made available to the parties concerned.

## Decision of Minister

- (10) The Minister may approve the amount of the estimate or vary the amount of the estimate and approve the estimate as so varied or determine the apportionment, as the case may be, and the decision of the Minister is final.

## Notice

- (11) Notice of the Minister's decision shall be given to the parties concerned within thirty days after he receives the report and recommendations of the committee.

1965, c. 14,  
s. 13,  
re-enacted

5. Section 13 of *The Child Welfare Act, 1965* is repealed and the following substituted therefor:

## Capital grants

- 13.—(1) Where the erection, purchase or other acquisition of a building by a municipality or by a children's aid society for the occupation in whole or in part by the society for use for a purpose other than to provide facilities and services to meet such special needs of children as are prescribed for the purposes of section 16 has been approved by the Minister, the Lieutenant Governor in Council may, out of moneys appropriated therefor by the Legislature, direct payment of an amount of 25 per cent of,

(a)

- (a) where the whole building is occupied by the society, the value of the building and the land on which it is erected; or
  - (b) where part of the building is occupied by the society, the proportion of the value of the building that the floor space occupied by the society bears to the total space of the building.
- (2) Where the erection of a new building or an addition <sup>Idem</sup> to an existing building by a society for the provision of facilities and services to meet such special needs of children as are prescribed for the purposes of section 16 has been approved by the Minister, the Lieutenant Governor in Council may, out of moneys appropriated therefor by the Legislature, direct payment to the society of an amount equal to the cost to the society of the new building or the addition, but not exceeding an amount based upon the bed capacity of the new building or the addition at the rate of \$5,000 per bed.
- (3) Where the acquisition of an existing building by a <sup>Idem</sup> society for the provision of facilities and services to meet such special needs of children as are prescribed for the purposes of section 16 has been approved by the Minister, the Lieutenant Governor in Council may, out of moneys appropriated therefor by the Legislature, direct payment to the society of an amount equal to the cost to the society of the acquisition, but not exceeding an amount based on the bed capacity of the building at the rate of \$1,200 per bed.
- (4) An amount payable to a children's aid society or a <sup>Time and manner of payment</sup> municipality under this section shall be paid at such times and in such manner as are prescribed by the regulations.

**6.—**(1) Subclause i of clause b of subsection 1 of section 19 <sup>1965, c. 14, s. 19,</sup> of *The Child Welfare Act, 1965* is amended by inserting after <sup>subs. 1,</sup> "or" in the second line "any child", so that the subclause shall <sup>cl. b,</sup> read as follows: <sup>subcl. i,</sup> <sup>amended</sup>

- (i) a child who is an orphan and who is not being properly cared for, or any child who is brought, with the consent of the person in whose charge he is, before a judge to be dealt with under this Part.

(2) Clause d of subsection 1 of the said section 19 is re-<sup>1965, c. 14, s. 19,</sup> pealed and the following substituted therefor: <sup>subs. 1,</sup> <sup>cl. d,</sup> <sup>re-enacted</sup>

(d)



(d) "judge" means a provincial judge presiding in a provincial court (Family Division).

1965, c. 14,  
s. 19,  
subs. 1,  
cl. f,  
re-enacted

(3) Clause *f* of subsection 1 of the said section 19 is repealed and the following substituted therefor:

(f) "place of safety" means a receiving home or foster home or an institution for the care and protection of children, and includes a hospital.

1965, c. 14,  
s. 19,  
subs. 2,  
re-enacted

(4) Subsection 2 of the said section 19 is repealed and the following substituted therefor:

By whom  
cases are  
to be  
heard

(2) Applications under this Part shall be heard by a judge presiding in a provincial court (Family Division) established for the county or district in which the child was taken into protective custody.

1965, c. 14,  
s. 19,  
subs. 4,  
amended

(5) Subsection 4 of the said section 19 is amended by striking out "or any other person appointed by the judge" in the third and fourth lines and by inserting after "court" in the fifth line "unless the judge appoints any other person to be guardian *ad litem* for this purpose", so that the subsection shall read as follows:

Guardian  
*ad litem*

(4) For the purposes of an application under this Part, where the parent of a child is under the age of twenty-one years, the Official Guardian shall be the guardian *ad litem* of the parent with the duty of safeguarding his or her interests before the court unless the judge appoints any other person to be guardian *ad litem* for this purpose, and the judge may make such order as to the costs of the guardian *ad litem* as he deems just.

1965, c. 14,  
s. 19,  
amended

(6) The said section 19 is amended by adding thereto the following subsection:

Idem

(5) A married woman may be appointed as guardian *ad litem* for the purposes of subsection 4.

1965, c. 14,  
s. 23,  
subs. 1,  
amended

7. Subsection 1 of section 23 of *The Child Welfare Act, 1965* is amended by inserting after "parent" in the third line "or person in whose charge he was at the time of his apprehension" and by striking out "ten" in the third line and inserting in lieu thereof "five", so that the subsection shall read as follows:

Detention  
limited

(1) A child detained in a place of safety under section 20 or clause *a* of subsection 1 of section 21 shall be

returned

returned to his parent or person in whose charge he was at the time of his apprehension or brought before a judge within five days of his detention.

8.—(1) Subsection 3 of section 24 of *The Child Welfare Act*, 1965, c. 14, s. 24, 1965 is amended by striking out "Public Welfare" in the subs. 3, amended seventh line and inserting in lieu thereof "Social and Family Services".

(2) Subsection 4 of the said section 24 is amended by 1965, c. 14, s. 24, adding at the commencement thereof "Subject to subsection subs. 4, amended 4a", so that the subsection shall read as follows:

(4) Subject to subsection 4a, the judge shall not proceed Notice to hear or dispose of the matter until he is satisfied that the parent or other person having the actual custody of the child and the municipality in which the child was taken into protective care have had reasonable notice of the hearing or that every reasonable effort has been made in the opinion of the judge to cause them to be notified.

(3) The said section 24 is amended by adding thereto the 1965, c. 14, s. 24, amended following subsection:

(4a) Where the child is a child of an unmarried mother, Idem the notice under subsection 4 shall be sent to the Director instead of to the municipality where the child was taken into protective care.

(4) Subsection 5 of the said section 24 is amended by 1965, c. 14, s. 24, striking out "Public Welfare" in the fifth line and inserting in subs. 5, amended lieu thereof "Social and Family Services".

(5) The said section 24 is amended by adding thereto the 1965, c. 14, s. 24, amended following subsections:

(5a) Where in the opinion of the judge, Judge may dispense with notice

(a) prompt service of any notice required under subsection 4, 4a or 5 cannot be effected; and

(b) any delay might endanger the health or safety of the child,

the judge may dispense with the requirements of subsection 4, 4a or 5, as the case may be.

(5b) Where the requirements of subsection 4, 4a or 5 Limitation where notice dispensed with have been dispensed with, the judge shall not make an order committing the child as a ward of the



Crown or make an order committing the child for a period exceeding thirty days as a ward of a children's aid society, except after holding a further hearing to which the requirements of subsection 4, 4a or 5, as the case may be, apply.

1965, c. 14,  
s. 24,  
subs. 7,  
repealed

(6) Subsection 7 of the said section 24 is repealed.

1965, c. 14,  
s. 25, cl. a,  
re-enacted

9. Clause a of section 25 of *The Child Welfare Act, 1965* is repealed and the following substituted therefor:

(a) that the child be placed with or returned to his parent or other person subject to supervision by the children's aid society for a period of not less than six months and not more than twelve months as in the circumstances of the case he considers advisable; or

. . . . .

1965, c. 14,  
s. 30,  
amended

10. Section 30 of *The Child Welfare Act, 1965* is amended by inserting after "25" in the seventh line "and may make such further order or terminate the existing order", so that the section shall read as follows:

Re-  
application  
before  
expiration  
of wardship

30. Where a child has been committed as a ward of a children's aid society, the society may at any time and shall, before the expiration of the period of wardship other than under section 34, apply to the judge for further consideration, and the judge shall thereupon further inquire and determine whether the circumstances justify a further order under section 25 and may make such further order or terminate the existing order, but in no case shall an order be made that results in the child being a ward of the society for a continuous period of more than twenty-four months.

1965, c. 14,  
s. 31,  
subs. 2,  
repealed

11. Subsection 2 of section 31 of *The Child Welfare Act, 1965* is repealed.

1965, c. 14,  
s. 34,  
amended

12. Section 34 of *The Child Welfare Act, 1965* is amended by inserting after "terminates" in the first line "upon the marriage of the ward or", so that the section shall read as follows:

Termination  
of wardship

34. Every wardship terminates upon the marriage of the ward or when the ward attains the age of eighteen years, but, upon the application of a children's aid society with the approval of the Director, a judge

may order that the wardship of a Crown ward continue until the ward attains the age of twenty-one years where the ward is dependent for educational purposes or because of mental or physical incapacity.

**13.** Clause *c* of subsection 1 of section 39 of *The Child Welfare Act, 1965* is repealed and the following substituted therefor: 1965, c. 14,  
s. 39,  
subs. 1,  
cl. c,  
re-enacted

(c) subject to section 28, visit, write to, telephone to, remove or attempt to remove from a foster home or place of safety or other place, or otherwise interfere with,

(i) a ward of the Crown or of a children's aid society,

(ii) the foster parents of a ward, or

(iii) a child lawfully detained under section 20 or subsection 1 of section 21,

without the consent in writing of the children's aid society under whose supervision the child is.

**14.** Subsection 1 of section 40 of *The Child Welfare Act, 1965* is amended by striking out "unreasonable" in the third line. 1965, c. 14,  
s. 40,  
subs. 1,  
amended

**15.** Subsection 1 of section 48 of *The Child Welfare Act, 1965* is repealed and the following substituted therefor: 1965, c. 14,  
s. 48,  
subs. 1,  
re-enacted

(1) In this Part, "judge" means a provincial judge presiding in a provincial court (Family Division). Interpre-  
tation

**16.—(1)** Subsection 1 of section 50 of *The Child Welfare Act, 1965* is amended by inserting after "wedlock" in the first line "or where it appears that a child is likely to be born out of wedlock", so that the subsection shall read as follows: 1965, c. 14,  
s. 50,  
subs. 1,  
amended

(1) Where a child is born out of wedlock or where it appears that a child is likely to be born out of wedlock and no agreement between the mother and the putative father with respect to the care and maintenance of the child is in force, a society and the mother of the child may enter into an agreement with the putative father of the child for the payment of money by the putative father in respect of the expenses and maintenance mentioned in subsection 1 Agreement  
for main-  
tenance of  
the child

of section 59, and, if the financial circumstances of the putative father change at any time, the terms of the agreement may be varied by the parties accordingly.

1965, c. 14,  
s. 50,  
subs. 5,  
amended

(2) Subsection 5 of the said section 50 is amended by inserting after "society" in the seventh line "where it is incurring costs on behalf of the mother or the child", so that the subsection shall read as follows:

Default  
under  
agreement

(5) Where the putative father is in default in payment of money under an agreement made under subsection 1, the mother or the society, or the mother and the society together, may make an application to a judge for an order to enforce the agreement, and, where the putative father continues in default for a period of sixty days and an application for an order to enforce the agreement has not been made, the society, where it is incurring costs on behalf of the mother or the child, shall within the next following period of thirty days make an application to a judge for an order to enforce the agreement.

1965, c. 14,  
s. 50,  
amended

(3) The said section 50 is amended by adding thereto the following subsection:

Variation  
or rescission  
of agree-  
ment

(6) Upon application by the mother, the putative father or the society or by the mother and the society together, a judge may at any time, in respect of an agreement made under subsection 1, rescind the agreement or,

(a) vary any amount of money payable thereunder; or

(b) vary any other term of the agreement,

and any agreement so varied may be enforced in the same manner as the original agreement.

1965, c. 14,  
s. 51,  
re-enacted

**17.** Section 51 of *The Child Welfare Act, 1965* is repealed and the following substituted therefor:

Application  
for  
affiliation  
order

51. Where no agreement has been entered into under section 50 or where the putative father is in default under an agreement made under section 50, an application may be made to a judge at any time for an affiliation order,

(a) by the mother of a child born or likely to be born out of wedlock;

(b)



- (b) by the next friend or guardian of a child born out of wedlock;
- (c) by a society; or
- (d) with the approval of a society, by any person or municipality having an apparently legitimate claim for reimbursement of moneys expended or payments of moneys charged in consequence of the mother's pregnancy, the birth of the child, the death of the child, the maintenance of the child or the maintenance of the mother.

**18.**—(1) Subsection 1 of section 52 of *The Child Welfare Act, 1965* is amended by striking out "or any other person appointed by the judge" in the third and fourth lines and by inserting after "court" in the sixth line "unless the judge appoints any other person to be the guardian *ad litem* for this purpose", so that the subsection shall read as follows:

- (1) For the purposes of an application under this Part, where the putative father or the mother is under the age of twenty-one years, the Official Guardian shall be the guardian *ad litem* of the putative father or the mother, as the case may be, with the duty of safeguarding his or her interests before the court unless the judge appoints any other person to be the guardian *ad litem* for this purpose, and the judge may make such order as to the costs of the guardian *ad litem* as he deems just.

(2) The said section 52 is amended by adding thereto the following subsection:

- (1a) A married woman may be appointed as guardian *ad litem* for the purposes of subsection 1.

**19.** Section 64 of *The Child Welfare Act, 1965* is amended by adding thereto the following subsections:

- (1a) The appeal shall be made by filing a notice of appeal with the clerk of the county or district court and serving a copy thereof on the other parties within thirty days after the making of the decision.
- (1b) The appellant or person served with notice of appeal may, upon at least two days notice to each of the other parties, apply to the judge to fix a date for the hearing of the appeal.

Decision

- (1c) The appeal shall be a hearing *de novo* and the judge may rescind, alter or confirm the decision being appealed or make any order or decision that ought to have been made.

1965, c. 14,  
s. 70,  
subs. 4,  
re-enacted

**20.** Subsection 4 of section 70 of *The Child Welfare Act, 1965* is repealed and the following substituted therefor:

Guardian  
*ad litem*

- (4) For the purpose of an application for an order for the adoption of a child under twenty-one years of age, other than a child who has been placed for adoption by a children's aid society, the court shall appoint a guardian *ad litem* of the child and a guardian *ad litem* of any parent of the child who is under twenty-one years of age and who is a party to the proceedings.

Idem

- (5) A married woman may be appointed as guardian *ad litem* for the purposes of subsection 1.

1965, c. 14,  
s. 73,  
subs. 4,  
amended

**21.**—(1) Subsection 4 of section 73 of *The Child Welfare Act, 1965* is amended by striking out "who is twenty-one or more years of age or who is under twenty-one years of age and has been married" in the first, second and third lines and by adding at the end thereof "provided that the court may dispense with the consent of the child if the court is satisfied that, having regard to all the circumstances of the case, the consent would not be appropriate", so that the subsection shall read as follows:

Idem,  
child and  
where  
married,  
spouse of  
child

- (4) An order for the adoption of a child shall be made only with the written consent of the child, and, where the child is married, with the written consent of the spouse, provided that the court may dispense with the consent of the child if the court is satisfied that, having regard to all the circumstances of the case, the consent would not be appropriate.

1965, c. 14,  
s. 73,  
subs. 5,  
amended

(2) Subsection 5 of the said section 73 is amended by inserting after "court" in the second line "upon application by the applicant for the adoption", so that the subsection shall read as follows:

Where  
consent  
not given

- (5) Where a consent required by this section has not been given, the court upon application by the applicant for the adoption may dispense with the requirement if, having regard to all the circumstances of the case, the court is satisfied that it is in the best interests of the child that the requirement be dispensed with.

(3) The said section 73 is amended by adding thereto the following subsections: 1965, c. 14, s. 73, amended

(5a) The court shall not dispense with a consent required under this section, except a consent required under subsection 4, until the court is satisfied that the person from whom the consent is required has had notice of the application for adoption and notice of the application to dispense with the consent, or that every reasonable effort has been made, in the opinion of the court, to cause such person to be notified. Notice

. . . . .

(7) No consent required by this section is invalid by reason only of the fact that the person giving it is under twenty-one years of age. Consent not invalid by reason of age

**22.** *The Child Welfare Act, 1965* is amended by adding thereto the following section: 1965, c. 14, amended

75a. Upon the hearing of an application for adoption, where the child is seven or more years of age, the court shall inquire into the capacity of the child to appreciate the nature of the application and shall, where practicable, hear the child. Procedure on application

**23.** Sections 82 and 83 of *The Child Welfare Act, 1965* are repealed and the following substituted therefor: 1965, c. 14, ss. 82, 83, re-enacted

82.—(1) For all purposes, as of the date of the making of an adoption order, Status of adopted child

(a) the adopted child becomes the child of the adopting parent and the adopting parent becomes the parent of the adopted child; and

(b) the adopted child ceases to be the child of the person who was his parent before the adoption order was made and that person ceases to be the parent of the adopted child,

as if the adopted child had been born in lawful wedlock to the adopting parent.

(2) The relationship to one another of all persons whether the adopted child, the adopting parent, the kindred of the adopting parent, the parent before the adoption order was made, the kindred of that former parent or any other person shall, for all purposes, be determined in accordance with subsection 1. Application of subs. 1 to relationship of persons



Application  
of section

- (3) This section applies and shall be deemed to have always applied with respect to any adoption made under any legislation heretofore in force, but not so as to affect any interest in property or right that has vested before the commencement of this section.

## Exception

- (4) Subsections 1 and 2 do not apply for the purposes of the laws relating to incest and the prohibited degrees of marriage to remove any person from a relationship in consanguinity that, but for this section, would have existed.

References  
in will or  
other  
document

83. In any will or other document, whether heretofore or hereafter made, unless the contrary is expressed, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person shall be deemed to refer to or include, as the case may be, a person who comes within the description as a result of his own adoption or the adoption of another person.

Effect of  
adoptions  
under other  
laws

- 83a. An adoption effected according to the law of any other province or territory of Canada or of any other country, or part thereof, before or after the commencement of this section, has the same effect in Ontario as an adoption under this Act.

1965, c. 14,  
s. 87,  
amended

- 24.** Section 87 of *The Child Welfare Act, 1965*, as amended by section 5 of *The Child Welfare Amendment Act, 1966*, is further amended by adding thereto the following clause:

- (hc) prescribing the times and manner of payment of capital grants under section 13.

Commence-  
ment

- 25.** This Act comes into force on the day it receives Royal Assent.

## Short title

- 26.** This Act may be cited as *The Child Welfare Amendment Act, 1970*.